



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

October 1, 1971

Hon. Robert S. Calvert  
Comptroller of Public Accounts  
State Finance Building  
Austin, Texas 78711

Opinion No. M- 963

Re: Traveling expenses  
pursuant to the cur-  
rent General Appro-  
priation Act.

Dear Mr. Calvert:

You have requested our opinion on the following questions:

(1) "Are the following types of expenses considered 'incidental expenses' regardless of the amount of each, so as to place them within the \$35.00 per diem allowance when they arise in connection with an authorized business trip:

1. Public Stenographer
2. Registration Fees
3. Telephone Bills
4. Telegraph Bills
5. Notary Fees for State Documents
6. Money Order Fees
7. Parking Fees for Rented Cars, State owned Cars, or Federally owned Cars
8. Hangars for Rented Airplanes
9. Tips or Handling Fees for State-Owned Equipment.

In the event that you hold that any of the above listed expenses are not included in 'incidental expenses', what is the authority for making the reimbursement for such expenses and would they be a charge against the travel appropriation?"

(2) "Does inclusion of the term, 'incidental expenses', under the per diem provision contravene the provisions in Article 6823a R.C.S., Section 3?"

(3) "Under the provisions of Senate Bill No.

11, Acts of the Regular Session of the Sixty-second Legislature, Article V, Section 15, under what circumstances could persons traveling under this provision claim reimbursement for parking, medical, laundry, and similar expenses."

In connection with the foregoing you refer to Attorney General's Opinions O-1253 (1939), O-6310 (1944), M-301 (1968) and M-939 (1971). In Attorney General's Opinion O-1253 it was held that a State employee could not receive hospitalization expenses as travel expense for the reason that during the period of confinement in a hospital the employee was not being engaged in the active discharge of his duties. In Attorney General's Opinion O-6310 it was held that expenses of personal luggage were not reimbursable. In Attorney General's Opinion M-301 it was held that charges required to be paid by a District Judge traveling to and attending the National College of State Trial Judges including a required parking permit and certain rental and laundry charges constitute "incidental expenses" incurred and are authorized to be reimbursed. In Attorney General's Opinion M-939 it was held that "incidental expenses" includes necessary expenses incidentally incurred by a State employee traveling on State business. We find nothing in our Opinion numbers O-1253 and O-6310 which is inconsistent with the conclusions reached hereinafter.

In view of the foregoing, it is our opinion that incidental expenses may include those items listed in your first question since each of those items may be an expense that is necessary to be incurred by the employee in the performance of official duties while on travel status. It is to be noted, however, that in numerous instances items 1 through 6 listed in your request may be paid as operating expense of the office rather than traveling expense of the employee.

Section 13 of Article V of the current General Appropriation Act provides, in part:

"Each employee traveling on state business outside of the boundaries of the State of Texas shall receive reimbursement for the actual cost

of meals, lodging and incidental expenses, not to exceed thirty-five dollars (\$35.00) per day. When both in-state and out-of-state travel occur in the same calendar day, the rate of travel allowance for all travel in that day shall be in an amount not to exceed thirty-five dollars (\$35.00) per day." (Emphasis added)

It is our opinion that the first six items listed in your question No. 1 should not be included in the \$35.00 limit. Such items should properly be reimbursed as an operating expense of the office rather than travel expense of the employee. Items 7, 8, and 9 are included in the \$35.00 limit as incidental travel expenses. See also Attorney General's Opinion No. O-6310, supra. With specific reference to the item of "handling fees" for state-owned equipment, this, like "official baggage" may in certain instances be reimbursed as an operating expense of the office rather than included in the \$35.00 limit as incidental travel expense.

Section 3 of Article 6823a provides:

"a. Reimbursement from funds appropriated by the Legislature for traveling and other necessary expenses incurred by the various officials, heads of state agencies, and employees of the state in the active discharge of their duties shall be on the basis of either a per diem or actual expense as specifically fixed and appropriated by the Legislature in General Appropriation Acts. A per diem allowance shall mean a flat daily rate payment in lieu of actual expenses incurred for meals and lodging and as such shall be legally construed as additional compensation for official travel purposes only.

"b. The rate of per diem and transportation allowance and method of computing those rates shall be those set forth in General Appropriation Acts providing for the expenses of the state government from year to year."

It is noted that Section 3 specifically states that

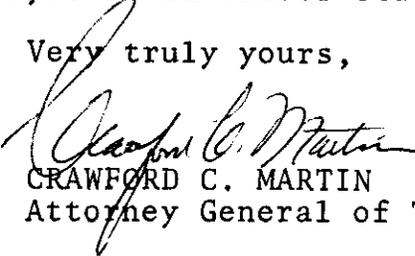
the rate of per diem and transportation allowance shall be those set forth in the General Appropriation Acts. Therefore the inclusion of incidental expenses in per diem and transportation allowances are authorized by Section 3 of Article 6823a, the preexisting law for the payment of such traveling expenses.

In answer to your third question you are advised that such traveling expenses are payable when incurred as a reasonable expense in connection with the performance of official duties while on travel status.

SUMMARY

Incidental expenses in connection with travel by State employees are those expenses reasonably necessary to performance of official duties while the employee is on travel status.

Very truly yours,



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Attorney General of Texas

Prepared by John Reeves  
Assistant Attorney General

APPROVED:  
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